

(2015) 11 MAN CK 0001
In the Manipur High Court
Case No : CRP(CRP Art. 227) No. 4 of 2010

Chongtham Ongbi Pishak Devi and Others	APPELLANT
Vs	
Chandam Ibo Singh and Others	RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2016) 1 GLT 537

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J.

Bench : Single Bench

Advocate : T. Rajendra, Advocate, for the Appellant; A. Golly, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Laxmi Kanta Mohapatra, C.J.

1. This Revision is directed against the order dated 8.12.2009 passed by the learned Civil Judge, Sr. Divn. I Manipur East in Execution Case No. 6 of 2008 arising out of OS No. 66 of 1989. The judgment debtors in the said Execution Case are the petitioners before this Court.

2. The respondents-1 and 2 had filed the Original Suit for a declaration that they are the owners of the suit land measuring .14 acre and the respondent Nos-1 and 2 as well as the defendant Nos-8 to 12 in the suit also inherited the suit land described in the schedule-A as co-owners. A further prayer was made to evict the present judgment debtors/defendants Nos- 1 and 2 from the suit land described in the schedule-A by demolishing the structures. The suit was decreed in May, 1996. During pendency of the suit, defendant No. 9, namely Khundom Meino Singh, expired and his legal heirs were substituted. However, in the cause title the office did not make any correction as a result of which in the decree name of late Khundom Meino Singh continued as defendant No. 9. The said judgment of the learned Civil Judge was challenged in appeal by the judgment debtors and

the appeal was allowed. The decree passed by the learned Civil Judge was set aside. The plaintiff/decreed holders challenged the first appellate court judgment in the Second Appeal No. 4 of 1999. The High Court allowed the Second Appeal solely on the ground that the lower appellate court had passed the decree against a dead person, i.e. defendant No. 9 in the suit and accordingly held that the first lower appellate court decree is a nullity. After disposal of the Second Appeal, the present execution case was levied for execution of the decree passed by the trial court.

3. In the said Execution Case the judgment debtors, who are petitioners before this Court, filed an objection stating therein that the decree is not an executable having been passed against a dead person. It was also contended before the executing court that at the stage of execution, the executing court cannot go beyond the decree and make any correction in the judgment of the trial court sought to be executed in the Execution Case.

The learned Civil Judge, in the impugned order, rejected the objection and directed for correction of the cause title in the judgment and decree passed by the trial court which was sought to be executed in the Execution Case.

4. Mr. T. Rajendra, learned counsel appearing for the petitioners assailed the impugned order solely on the ground that the executing court cannot go beyond the decree. According to him, if the decree has been passed against a dead person, the said decree is null and void and cannot be executed. It was further submitted that even though substitution had been allowed during pendency of the suit and it was directed to bring on record the legal heirs of the deceased defendant No. 9, the said order was not carried out and consequently name of the deceased defendant No. 9 continued in the cause title of the decree which was challenged in appeal by the judgment debtors. Therefore, there was no mistake on the part of the judgment debtors and for the mistake of the trial court, the executing court cannot penalise them.

5. Mr. A. Golly, learned counsel appearing for the respondents/decreed holders, submitted that not bringing the legal heirs on record by correcting the cause title is a clerical mistake which could be rectified at any stage and even at the stage of execution. Therefore, the executing court was not only justified in rejecting the objection raised by the petitioner but also was justified in directing to carry out the clerical mistake appearing in the decree so far as the cause title is concerned.

6. Undisputedly, during pendency of the suit after death of the defendant No. 9, an application was filed for substituting his legal heirs. By order dated 20.7.1994, such application for substitution was allowed and the legal heirs of the deceased defendant No. 9, were directed to be brought on record. Unfortunately, due to the clerical error, the office did not make any change in the cause title of the plaint, as a result of which name of the deceased defendant No. 9 continued in the cause title and was also shown in the judgment and decree passed by the

trial court. Though the judgment debtors, who are petitioners before this Court, were aware of such substitution, they preferred an appeal against the judgment and decree of the trial court by impleading the deceased defendant No. 9 as a respondent before the first appellate Court. Though the appeal was allowed by the first appellate court, the second appeal preferred by the decree holders was allowed on the ground that the first appellate court had passed the judgment and decree against a dead respondent. The High Court also declared that the judgment and decree of the first appellate court was null and void. Therefore, the sole question for consideration is as to whether the executing court can direct correction of any clerical error appearing in the decree passed by the trial court sought to be executed or not.

7. Mr. T. Rajendra, learned counsel for the petitioners relied upon some decisions to support his contention that the executing court cannot go beyond the decree and direct any correction. The first decision cited by the learned counsel for the petitioners is the case of Manowar Islam Vs. Masud Ahmed and Others, . In the said reported case, a compromise decree was sought to be executed. There were some mistakes in the area of land in dispute. Since the decree was passed on a compromise on the basis of a petition filed for compromise, any mistake appearing in the decree was due to mistake appearing in the compromise petition. Taking this fact into consideration, High Court held that such mistake cannot be treated as clerical, arithmetical or accidental; and accordingly the executing Court cannot direct for correction. The second case relied upon by the learned counsel for the petitioners is the case of Ashutosh Das Vs. Smt. Sushma Rani Das and Others, . In the said reported case also the trial court, while delivering the judgment and decree, omitted the specific relief granted in the judgment and therefore court held that such omission is an accidental slip and Court could either on its own motion or on petition rectify the same. However, executing court cannot correct such omission u/s. 47 of the CPC. Therefore, the reported case relates to an accidental slip/omission on the part of the trial court in relation to the terms of the decree. The 3rd decision cited by the learned counsel for the petitioners is the case of Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan and Others, . In the said reported case also the relief granted in the suit had not been specifically mentioned and therefore it was not open for the executing court to make any changes in the terms of the decree. The last decision relied upon by the learned counsel for the petitioner is the case of C.F. Angadi Vs. Y.S. Hirannayya, . The Apex Court, in the said judgment, held that a Court executing a decree shall execute as it stands. It cannot modify or vary the terms of the decree. There is no dispute about such proposition of law. The executing court cannot go beyond the decree and consequently has no jurisdiction to modify or vary the terms of the decree.

So far as the present case is concerned, as stated earlier, undisputedly substitution had been allowed by order Dt. 20.7.1994 and it was for the office to carry out the substitution by making changes in the cause title of the plaint. The office committed mistake of not carrying out the said substitution as a result of

which in the cause title the name of the deceased defendant No. 9 continued. By directing correction in the cause title, the executing court has not exceeded its jurisdiction and such clerical mistake could be rectified which does not amount to modifying or varying the terms of the decree.

I, therefore, find no justification to interfere with the impugned order. Revision is consequently dismissed.